

**REMARKS**

The office action mailed January 29, 2004 has been received and reviewed. Claims 1 through 5 are pending in the application. All stand rejected. The application is to be amended as previously set forth. All amendments are made without prejudice or disclaimer. Reconsideration is respectfully requested.

A. 35 U.S.C. § 102:

Claims 1 through 4 were rejected under 35 U.S.C. § 102(b) as assertedly being anticipated by U.S. Patent 5,854,004 to Czernilofsky et al. In reaching the rejection, the Office is of the position that “a modification or derivative of an oligopeptide . . . reads on any change(s) to the oligopeptide, which must be read broadly to include any other compound because any other compound can be made by modifying or being derived from oligopeptides.” (Office Action, p. 3, lines 17-22). Further, the Office is of the position that the mentioned “vegetable extracts” of Czernilofsky would include oligopeptides. (*Id.*, at p. 3, line 23 to p. 4, line 2). Applicants traverse the rejection.

Applicants have also amended claims 1-5 and request that the rejection be withdrawn. Specifically, independent claim 1 has been amended to remove the “modifications” thereof language, and to identify that the now claimed derivatives are “peptide derivatives”. Basis for the amendment is inherent throughout the application, but specific basis can be found at the last two lines of page 10 through page 12, line 2, of the patent application as-filed. Such amendment should address the first part of the Office’s position.

With respect to the second part of the Office’s position, *i.e.*, that vegetable extracts comprise oligopeptides, applicants respectfully disagree. Nowhere in the reference are any particular vegetables identified, nor is their content disclosed to include peptides, and vegetable extraction procedures are identified that would segregate and protect a peptide were it present. Czernilofsky is non-enabling for such materials.

With respect to dependent claim 3, the Office even admits that “Czernilofsky et al. do not specifically teach testing of hCG in their assay”. (Office Action, p. 6, lines 17-18). Accordingly, on its face, Czernilofsky cannot anticipate claim 3.

Applicants thus respectfully request that the rejections be withdrawn.

B. 35 U.S.C. § 103:

Claims 1 through 5 were also rejected under 35 U.S.C. § 103(a) as being obvious over Czernilofsky in view of U.S. Patent 6,361,992 to Szludlinski et al. Applicants traverse the rejection.

Again, in reaching the rejection, the Office takes the position that “a modification or derivative of an oligopeptide . . . reads on any change(s) to the oligopeptide, which must be read broadly to include any other compound because any other compound can be made by modifying or being derived from oligopeptides” and further that the mentioned “vegetable extracts” of Czernilofsky would include oligopeptides. (Office Action, p. 5, line 22 through page 6, line 7). As previously identified, however, claims 1 through 5 have been properly amended to remove the modification language, and to identify that the derivatives are “peptide derivatives”. Thus, the rejection fails for this reason.

Furthermore, applicants have generated the insight (and claimed) that oligopeptides unexpectedly have gene regulatory activity. This insight is not taught by the combined references, and no reasonable expectation of success would exist based on the references of record. They simply lack such disclosure.

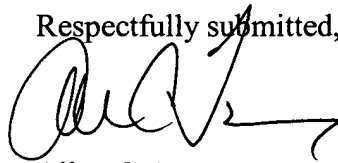
However, in order to expedite processing of the instant claims, applicants are further amending the claims to oligopeptides of no more than 30 amino acids in length. Basis for this amendment can be found at page 20, second paragraph. The glycoproteins of Szludlinski are believed to be greater than 30 amino acids in length, and the amendment thus further distinguishes the references.

Absent such a teaching or a reasonable expectation of success, applicants respectfully submit that the rejection be withdrawn.

Conclusion

The application should now be in condition for allowance. In the event that questions remain after considering the foregoing, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



Allen C. Turner

Registration No. 33,041

Attorney for Applicants

TRASKBRITT, PC

P.O. Box 2550

Salt Lake City, Utah 84110-2550

Telephone: 801-532-1922

Date: March 15, 2004

Document in ProLaw